United Nations CRPD/C/COK/CO/1

Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Concluding observations on the initial report of the Cook Islands*

I. Introduction

1. The Committee considered the initial report of the Cook Islands (CRPD/C/COK/1) at its 190th and 191st meetings (CRPD/C/SR.190 and 191), held on 9 and 10 April 2015 respectively, and adopted the following concluding observations at its 200th meeting, held on 16 April 2015.

2. The Committee welcomes the initial report of the Cook Islands, which was prepared in accordance with the Committee's reporting guidelines, and thanks the State party for the written replies (CRPD/C/COK/Q/1/Add.1) to the list of issues prepared by the Committee.

3. The Committee appreciates the fruitful dialogue held with the State party's delegation, at which many issues were raised, as well as its proactive and open attitude.

II. Positive aspects

4. The Committee commends the Cook Islands on a number of achievements. It notes the alignment of the concept of disability in the Convenion with the Cook Islands National Disability Policy. It commends the State party on its nev Disability-Inclusive Development Policy 2014–2018, and its National Inclusive Education Strategy 2011–2016. It commends the State party for the translation of the Convention into Maori, and for its wide dissemination. It also notes that the Cook Islands is the frst country in the Pacific islands to report to the Committee, and is regarded as a leader on disability among Pacific island nations. The Committee is pleased to learn that the State party is improving its database framework for collecting data on persons with disabilities to serve as a basis for policies and programmes across all government ministries.

* Adopted by the Committee at its thirteenth session (25 March–17 April 2015).

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III. Principal areas of concern and recommendations

A. General principles and obligations (arts. 1–4)

5. The Committee is concerned that the definitions in the Disability Act 2008 and the Welfare Act 1989 (including amendments) are incompatible with the concept of disability in the Convention.

6. **The Committee recommends that the State party amend the Disability Act 2008 and the Welfare Act 1989 to reflect the concept of disability in the Convention and that it eliminate the use of derogatory language throughout its laws, policies and discourse.**

7. The Committee is concerned that the State party's approach to seeking input from persons with disabilities and their representative organizations is insufficient and is dependent on the discretion of the State party. The Committee is also concerned that the State party does not routinely invite persons with disabilities and their representative organizations to all meetings where decisions are taken that will affect their lives.

8. **The Committee recommends that the State party:**

(a) **Establish a legally recognized formal mechanism with funding to ensure the effective participation of persons with disabilities and their representative organizations in the process of developing, drafting and implementing laws and policies concerning all persons with disabilities, especially persons with psychosocial or intellectual disabilities, children with disabilities, women with disabilities, and older persons with disabilities;**

(b) **Ensure that persons with disabilities and their representative organizations are invited to international meetings and engagements that involve decision-making on issues of disability.**

B. Specific rights (arts. 5–30)

Equality and non-discrimination (art. 5)

9. The Committee is concerned that the Disability Act neither provides for reasonable accommodation nor prohibits its denial as disability-based discrimination. Furthermore, the Committee is concerned that State party does not legally require the provision of reasonable accommodation to persons with disabilities for the enjoyment of their different fundamental rights. In addition, the Disability Act does not provide a definition, or guidance, with regard to what constitutes a disproportionate and undue burden. The Committee is also concerned that there is a lack of legal provision in respect of other forms of discrimination, including intersectional discrimination. For example, the Employment Relations Act 2012 does not recognize discrimination across more than one protected group. The Committee also notes that several laws continue to permit disability-based discrimination.

10. **The Committee recommends that the State party:**

(a) **Amend the Disability Act, so as to ensure that denial of reasonable accommodation is recognized in law as a form of disability-based discrimination and that it applies explicitly to all rights, including fundamental rights;**

(b) **Amend laws on discrimination, including the Employment Relations Act 2012, to introduce additional legal and policy measures using a human rights framework to address multiple or intersectional grounds of discrimination,**

discrimination by association, and discrimination against persons perceived to have a disability;

(c) **Repeal discriminatory laws and provisions that deny rights and exclude participation and inclusion on the ground of disability, including the Entry, Residence and Departure Act, the Electoral Act, and laws permitting substituted decision-making, involuntary detention and forced treatment.**

Women with disabilities (art. 6)

11. The Committee is concerned that the State party does not adequately address the question of promoting the full inclusion of women and girls with disabilities in all spheres of life, particularly in health, education and employment.

12. **The Committee recommends that the State party improve its measures to promote the full inclusion of women and girls with disabilities by:**

(a) **Establishing a formal consultation mechanism to ensure that women and girls with disabilities across the country, and their representative organizations, are meaningfully consulted and are enabled to participate in the legislative and political spheres;**

(b) **Taking concrete measures to mainstream the rights of women and girls with disabilities into all laws, policies and programmes connected with gender equality, in line with the Convention.**

Children with disabilities (art. 7)

13. The Committee is concerned at the lack of awareness regarding the rights of children with disabilities and at the absence of a specific strategy to address their rights. It is also concerned that children with disabilities are not systematically involved in decisions that affect their lives and do not have the opportunity to express their opinion on matters that affect them directly.

14. **The Committee recommends that the State party raise awareness of the rights of children with disabilities through training in schools, family settings and the wider community, in close cooperation with organizations of persons with disabilities, and that it develop a comprehensive rights-based strategy for children with disabilities that includes safeguards to protect their rights. The Committee also recommends that children with disabilities be consulted in all matters affecting them — with appropriate assistance provided, according to their disability and age — in a way that is aligned with the concluding observations of the Committee on the Rights of the Child (CRC/C/COK/CO/1).**

15. The Committee notes the project for early identification of, and intervention for, children with disabilities, which is due to be put into operation before 2016, however it is concerned that the project is of a temporary nature and is unsustainable in meeting the long-term needs of children with disabilities.

16. **The Committee recommends that the State party:**

(a) **Establish a permanent early identification and intervention programme for children with disabilities, from birth to school age;**

(b) **Identify and provide additional specialist paediatric services that are not currently available;**

(c) **Provide families of children with disabilities with financial assistance, training and support mechanisms to ensure their children's inclusion and full participation in the family and the community.**

Awareness-raising (art. 8)

17. The Committee is concerned about the limited awareness of the role and function of the Office of the Ombudsman introduced under the Disability Act 2008. The development of appropriate fact sheets made available on the Ministry of Internal Affairs website is insufficient, given the limited access to the Internet across the islands. The Committee is also concerned that awareness-raising campaigns for the public, and training across the public sector on the rights of persons with disabilities, the Convention and the Optional Protocol, have not been carried out.

18. **The Committee recommends that the State party:**

(a) **Improve awareness of the role of the Ombudsman as a channel for lodging complaints regarding violations of the human rights of and/or discrimination against persons with disabilities;**

(b) **Conduct awareness-raising by providing mandatory training to persons with disabilities and their representative organizations, State officials, national justice system personnel, and employers;**

(c) **Disseminate information from the Ombudsman more widely, in accessible formats, to all persons with disabilities across the country, including information on remedies and sanctions for non-compliance;**

(d) **Devise, develop and conduct, through the mass media, together with persons with disabilities and their representative organizations, awareness-raising campaigns targeting the general public, government and the private sector to foster a positive image of persons with disabilities;**

(e) **Conduct awareness-raising and training for the judiciary, legal professionals, the public, and organizations of persons with disabilities, on legal action and remedies, as well as on using the Optional Protocol to the Convention.**

Accessibility (art. 9)

19. The Committee is concerned that the review of the compliance of the Building Code with the Convention has not been conducted, and that progress on accessibility to existing public buildings and services, footpaths and street signage, information and communications, public service provision, and air and sea transport has been limited.

20. **The Committee recommends that the State party:**

(a) **Review the Building Code in consultation with organizations of persons with disabilities;**

(b) **Adopt a legally binding accessibility action plan, with benchmarks, indicators and timelines, to cover all aspects of the built environment, public service provision, information and communications, and air and sea transport, as referred to in the Committee's general comment No. 2 (2014) on accessibility, and carry out regular monitoring and evaluation of the plan with the participation of organizations of persons with disabilities to eliminate all existing barriers within specified periods of time.**

Situations of risk and humanitarian emergencies (art. 11)

21. The Committee is concerned that the inclusion of persons with disabilities in disaster risk reduction and response protocols, and the accessibility of those protocols to persons with disabilities, is insufficient.

22. **The Committee recommends that the State party conduct systematic collection of disaggregated data to inform the development of accessible and inclusive protocols, especially for deaf persons, by implementing and funding the Joint National Action Plan for Disaster Risk Management, and that it ensure the necessary budget allocations, including through the use of financing originating from international cooperation.**

Equal recognition before the law (art. 12)

23. The Committee is concerned that current legislation enables the appointment of a trustee to make legal decisions on behalf of a person with intellectual and/or psychosocial disabilities.

24. **The Committee recommends that the State party:**

(a) **Repeal that legislation so as to abolish guardianship measures in law and practice and to ensure recognition of the legal capacity of persons with disabilities on an equal basis with others, and introduce supported decision-making mechanisms, in line with the Committee's general comment No. 1 (2014) on equal recognition before the law;**

(b) **Develop support mechanisms at the community level to promote choices, autonomy and inclusion, for children and adults with disabilities.**

Access to justice (art. 13)

25. The Committee is concerned that current legislation denies access to justice to persons deprived of legal capacity, and that the justice system is not sufficiently accessible.

26. **The Committee recommends that the State party:**

(a) **Take immediate measures to repeal laws permitting substituted decision-making, which restrict access to courts, and ensure that all persons with disabilities can access justice by amending legislation in order to enable supported decision-making;**

(b) **Provide accessible information and communications, including sign language interpreters, legal aid, physical access to the courts, and other procedural accommodations;**

(c) **Ensure effective training of personnel in the justice and prison system on the application of human rights standards specifically for persons with disabilities, including accessibility, procedural accommodations and reasonable accommodation.**

Liberty and security of the person (art. 14)

27. The Committee is concerned about the deprivation of liberty of persons with psychosocial disabilities, and their removal to medical facilities in New Zealand. Furthermore, the Committee is concerned about the lack of provision of reasonable accommodation to prisoners with disabilities.

28. **The Committee recommends that the State party:**

(a) **Repeal all relevant legislation in order to prohibit detention on the grounds of disability, including involuntary placement in hospitals, institutions or prisons;**

(b) **Ensure the provision of reasonable accommodation to prisoners with disabilities.**

Freedom from exploitation, violence and abuse (art. 16)

29. The Committee is concerned that current legislation regarding domestic violence uses derogatory language, and does not ensure that women and girls with disabilities are protected on an equal basis with others. It is also concerned that it does not provide accessible helplines or shelters, nor training for health professionals, counsellors and the personnel of police units to work with women and girls with disabilities.

30. **The Committee recommends that the State party:**

(a) **Provide fully funded, accessible helplines and shelters for women with disabilities who experience violence, whether inside or outside the home;**

(b) **Provide specific training for health professionals, counsellors and personnel of the Police Family Violence Unit to work with women and girls with disabilities who are victims of violence.**

31. The Committee is concerned that current law authorizes the use of force against children with disabilities "by way of correction".

32. **The Committee recommends that the State party replace existing laws so as to prohibit all corporal punishment, so that children with disabilities are legally protected from all punitive assault, including in the home.**

33. The Committee is concerned about the lack of safeguards to prevent financial and psychological abuse of persons with disabilities by their "caregivers", and at the lack of resources available for the provision of support services to persons with disabilities who are victims of violence.

34. **The Committee recommends that the State party introduce appropriate caregiver training, safeguards and monitoring, in order to prevent abuse of the Disability Allowance by "caregivers", and that it provide resources for professional and accessible information and services for victims of violence and abuse, especially in remote areas.**

Protecting the integrity of the person (art. 17)

35. The Committee is concerned that current legislation does not protect women and girls with disabilities from forced sexual and reproductive health procedures, nor does it provide for sexual and reproductive health education.

36. **The Committee recommends that the State party:**

(a) **Revise the Criminal Code and any other relevant laws to protect women and girls with disabilities from coerced sterilization and contraception and other forced medication, in the absence of the individual's free and informed consent;**

(b) **Introduce accessible sexual and reproductive health education programmes in schools and the community that are inclusive of young persons with disabilities, including women and girls.**

Liberty of movement and nationality (art. 18)

37. The Committee is concerned about persons with disabilities being denied entry into the State party on the basis of disability.

38. **The Committee recommends that the State party amend the law so as to allow all persons with disabilities entry to the State party on an equal basis with others.**

Living independently and being included in the community (art. 19)

39. The Committee is concerned that there are no registered personal assistance services in the State party and that families are the sole base of support for persons with disabilities.

40. **The Committee recommends that the State party develop support services for persons with disabilities to live independently in the community, which should include setting a concrete time frame and allocating a budget for the establishment of professional personal assistance services, with the active participation of organizations of persons with disabilities.**

Freedom of expression and opinion, and access to information (art. 21)

41. The Committee is concerned at the lack of access to information and communications technologies (ICTs), and the lack of availability of Braille, sign language, easy read and digital communications.

42. **The Committee recommends that the State party, in accordance with general comment No. 2:**

(a) **Enact legislation to ensure that all information and communications provided to the general public are available to all persons with disabilities in accessible formats, including sign language, Braille, and other accessible modes, means and formats of communication, and ICTs;**

(b) **Make sign language and Braille training available so that sign language and Braille can be used by deaf and blind Cook Islanders in schools and in public.**

Education (art. 24)

43. The Committee is concerned that there is an insufficient budget allocation and provision of support for inclusive education.

44. **The Committee recommends that the State party:**

(a) **Ensure an inclusive and quality education system;**

(b) **Introduce tailored education plans for all students with disabilities within mainstream schools;**

(c) **Ensure the availability of assistive devices and support in classrooms, of accessible educational materials and curricula, and of accessible equipment and school environments, with the corresponding budget allocations.**

Health (art. 25)

45. The Committee is concerned that health-care professionals and public health experts, including providers of sexual and reproductive health services, lack the necessary training to provide inclusive health care and to meet the specific needs of persons with disabilities and their families.

46. **The Committee recommends that the State party:**

(a) **Ensure training on disability for health-care professionals and public health experts, prioritizing the training of providers of sexual and reproductive health services on accessible and inclusive services for persons with disabilities;**

(b) **Amend the Criminal Code to prohibit guardianship, so that women with disabilities can exercise their right to sexual and reproductive autonomy on an equal basis with others;**

(c) **Provide mental health services for children and adolescents with disabilities across the islands.**

Habilitation and rehabilitation (art. 26)

47. The Committee is concerned about the availability of assistive devices and the heavy reliance on overseas aid for their provision, and about the availability of rehabilitation services.

48. **The Committee recommends that the Ministry of Health's Rehabilitation Group provide free at point of source all rehabilitation equipment, assistive devices and mobility aids (including their repair) and establish an array of rehabilitation services across the country.**

Work and employment (art. 27)

49. The Committee is concerned at the low number of persons with disabilities in employment. Furthermore, the Committee is concerned that there are no formal transition programmes for persons with disabilities to enter the open labour market.

50. **The Committee recommends that the State party:**

(a) **Collect disaggregated data and information on persons with disabilities in employment programmes, vocational programmes and transition programmes;**

(b) **Provide support for the transition from education to the open labour market which permits freedom of choice to pursue vocations according to personal will and preferences;**

(c) **Enable the public sector to serve as a role model by creating employment opportunities for persons with disabilities in the public sector.**

Participation in political and public life (art. 29)

51. The Committee is concerned that the Electoral Act both denies the right to vote and to stand for election to some groups of persons with disabilities, and fails to systematically protect the right to vote in private at polling stations. Furthermore, it is concerned that elections are not accessible to persons with disabilities.

52. **The Committee recommends that the State party repeal provisions of the Electoral Act 2004 to ensure that all persons with disabilities, irrespective of their disability, can vote in private at polling stations and stand for election. It also recommends that the State party ensure access to polling booths for persons with disabilities, supply tools and instruments such as Braille voting sheets, make the ballot papers available to persons with disabilities via accessible technology, and have available sign language interpreters, so that persons with disabilities can vote in all elections, independently and secretly and, if needed, with a support person of their own choice.**

Participation in cultural life, recreation, leisure and sport (art. 30)

53. The Committee is concerned that the State party has not acceded to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, and that libraries do not have books available in Braille or easy read formats, or available digital resources. It is also concerned that there are no policies in place in the tourism and travel sector to facilitate tourist travel by persons with disabilities.

54. **The Committee recommends that the State party:**

(a) **Accede to the Marrakesh treaty as soon as possible;**

(b) **Ensure that libraries have books available in Braille and easy read formats, and accessible digital resources;**

(c) **Ensure that tourism policies and practices are inclusive of persons with disabilities, and disseminate the World Tourism Organization Recommendations on Accessible Tourism for All among travel agents and tourism agencies.**

C. Specific obligations (arts. 31–33)

Statistics and data collection (art. 31)

55. The Committee is concerned that the current census does not record the numbers of persons with disabilities born in the Cook Islands who relocate internationally to access health and education services because of a lack of provision of such services on the islands.

56. **The Committee recommends that the State party:**

(a) **Update the census questionnaire to provide a representative picture of persons with disabilities across the islands, including those who relocate;**

(b) **Develop a centralized and regularly updated database, in which data is disaggregated by gender, age, ethnicity, rural/urban population and impairment type.**

57. The Committee is concerned at the lack of data and statistics on children with disabilities across the State party.

58. **The Committee recommends that the State party collect disaggregated data across all sectors concerning children, which should include the monitoring of abuse and violence in all care settings for children with disabilities.**

International cooperation (art. 32)

59. The Committee is concerned that the new Disability-Inclusive Development Policy does not have a timeline for implementation, and nor have persons with disabilities, through their representative organizations, been nominated as key stakeholders in the monitoring process for that policy.

60. **The Committee recommends that the State party introduce a timeline for implementation of the Disability-Inclusive Development Policy and ensure the involvement of persons with disabilities in the development and monitoring of the policy.**

National implementation and monitoring (art. 33)

61. The Committee is concerned at the absence of an independent monitoring framework and the lack of civil society involvement.

62. **The Committee recommends that the State party designate an independent monitoring framework aligned to the Paris Principles, with an allocated budget, and that it ensure the participation of persons with disabilities as required by article 33 (3).**

Technical cooperation

63. The Committee recommends that the State party avail itself of technical cooperation from the member organizations of the Inter-Agency Support Group on the Convention on the Rights of Persons with Disabilities, for the purpose of obtaining guidance and assistance in the implementation of the Convention and of the present concluding observations.

Follow-up and dissemination

64. The Committee requests that the State Party, within 12 months and in accordance with article 35, paragraph 2, of the Convention, provide information on the measures taken to implement the Committee's recommendations as set forth in paragraph 42 above.

65. The Committee requests the State party to implement the recommendations of the Committee as contained in the present concluding observations. It recommends that the State party transmit the concluding observations for consideration and action to members of the Government and Parliament, officials in relevant ministries, local authorities, and members of relevant professional groups, such as education, medical and legal professionals, as well as to the media, using modern social communication strategies.

66. The Committee strongly encourages the State party to involve civil society organizations, in particular disabled persons' organizations, in the preparation of its periodic report.

67. The Committee requests the State party to disseminate the present concluding observations widely, including to non-governmental organizations and representative organizations of persons with disabilities, as well as to persons with disabilities themselves and members of their families, in national and minority languages, including sign language, and in accessible formats, and to make them available on the government website on human rights.

Next report

68. The Committee requests the State party to submit its combined second and third periodic reports no later than 8 June 2019, and to include therein information on the implementation of the present concluding observations. The Committee invites the State party to consider submitting the above-mentioned reports under the Committee's simplified reporting procedure, according to which the Committee prepares a list of issues at least one year prior to the date set for issuance of the report/combined reports of a State party. The replies of a State party to such a list of issues constitute its report.